



PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of : Confirmation No. 4697
Jean-Paul CERVENY : Group Art Unit 1744
Application No. 09/889,994 : Examiner: Monzer R. Chorbaji
Filing Date: July 25, 2001 : (571) 272-1271
For a Patent for a :
MODULAR MACHINE FOR :
STERILIZING CLOSURE PARTS :
OF BOTTLES WITH HELICAL PATH :
(as amended) : December 28, 2005

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application, pursuant to the program outlined at OG Notices: 12 July 2005.

The present Request is being filed with a Notice of Appeal, and no amendments are being filed with this Request.

For reasons which are summarized below, it is believed that the rejections of record are clearly improper and a review of the rejections of record is respectfully requested prior to the filing of an appeal brief.

Pending claims 30 to 39, 41 to 53, 55 to 58 and 60 have been rejected under 35 U.S.C. §102(b) as being anticipated by a U.S. patent to Pethö (US 4,958,649). Claims 59, 61 and 62 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Pethö, and claims 40 and 54 have been rejected under 35 U.S.C. §103(a) as being unpatentable over a proposed combination of Pethö and a U.S. Patent to Zucchini et al. (US 5,098,447).

Although the Examiner has made an extensive analysis of how the patent to Pethö has been applied to applicant's claims, it is submitted that either the manner of operation of Pethö's apparatus is being incorrectly assessed, or the subject matter of applicant's claims is being incorrectly interpreted.

1. Pethö does not disclose the helical path for directing stoppering parts through a sterilizing machine which is specifically recited in applicant's claims.

The Reply filed in this matter on April 4, 2005, provided definitions for the terms "helical" and "spiral" to differentiate between the helical path recited in applicant's claims and the various movements associated with the transport path of Pethö's apparatus (see, line 4 of page 13 to line 3 of page 14). It was noted that "a helical path, i.e., a path which progresses along 'a curve traced on a cylinder... by the rotation of a point crossing its right sections...' at an angle to the longitudinal axis of the sterilizing unit, so the stoppering parts can travel from the inlet of the unit to a longitudinally

opposing outlet of the unit", distinguishes the transport path developed through Pethö's apparatus, which progresses either axially or "in a plane perpendicular to the longitudinal axis of the disclosed apparatus" (see, line 17 of page 14 to line 6 of page 15 of the Reply). This structural distinction is further discussed in a Reply filed December 21, 2005, from line 7 of page 10 through the bottom of page 12.

Equating the helical path recited in applicant's claims with the transport path defined by Pethö clearly either results from an incorrect reading of Pethö or an incorrect interpretation of the helical path which is recited in applicant's claims. No disclosure has been found in Pethö which would suggest or even enable the combined axial and rotational movement which would be required to develop a helical transport path, in accordance with applicant's claims (see, pages 4 to 9 of the Reply filed December 21, 2005).

2. Pethö does not disclose a sterilizing machine having an inlet at a first end, and an outlet at a second end which is opposite to the first end relative to the longitudinal axis of the machine, as is specifically recited in applicant's dependent claim 31.

Resulting from the helical transport path which is developed through applicant's apparatus, the inlet for the unsterilized stoppering parts and the outlet for the sterilized stoppering parts are located at opposing ends of the sterilizing

apparatus which are longitudinally separated from each other. The inlet and the outlet for the stoppers being operated upon by Pethö are longitudinally aligned with each other, and radially separated from each other (see, line 1 of page 13 through line 2 of page 14 of the Reply filed December 21, 2005).

Equating the longitudinally opposing first and second ends of the helical path recited in applicant's claims with the longitudinally aligned, radially opposed inlet and outlet of Pethö's apparatus clearly either results from an incorrect reading of Pethö or an incorrect interpretation of the term longitudinal which is recited in applicant's claim 31.

3. Pethö does not disclose the use of a driving fluid to move stoppering parts through a sterilizing apparatus, as distinguished from rotational movements, as is specifically recited in applicant's dependent claim 47.

Applicant's apparatus is capable of using only a driving fluid for setting the stoppering parts in motion along the helical path which is developed for them, eliminating the need for rotation of the drum of the apparatus. In Pethö, only rotation of the apparatus is used for purposes of causing the stoppers to progress along the transport path which is developed for them (see, line 3 of page 14 through line 9 of page 15 of the Reply filed December 21, 2005).

The position that Pethö discloses the use of only a driving fluid for transporting stoppers along the transport path

established for the stoppers clearly results from an incorrect reading of Pethö.

4. In Pethö, the stoppers are not set in motion by friction against a rotating member, as is specifically recited in applicant's dependent claim 33.

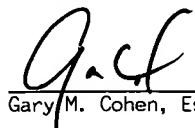
Pethö secures the stoppers in position using partition walls associated with the plates of the disclosed plate pack, precluding any movement of the stoppers not caused by rotation of the plate pack. The stoppers are not set in motion by friction against a rotating member, as is recited in applicant's dependent claim 33 (see, lines 10 to 20 of page 15 of the Reply filed December 21, 2005).

The position that Pethö's apparatus sets the stoppering parts in motion by friction against a rotating member clearly results from an incorrect reading of Pethö.


In view of the foregoing, it is submitted that an appeal should not be needed to secure an allowance of this patent application, and corresponding action is respectfully requested.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on December 28, 2005.

Date: 12/28/05


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Respectfully submitted,


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